No. 3092

United States
Circuit Court of Appeals
For the Ninth Circuit.

PUGET SOUND ELECTRIC RAILWAY, a Corporation,

Plaintiff in Error,

vs.

ALEXANDER MATSON,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Filmer Bros. Co. Print, 330 Jackson St., S. F., Cal.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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Names and Addresses of Attorneys.

FRANK D. OAKLEY, Esquire, 408 Perkins Building, Tacoma, Washington,
Attorney for Plaintiff in Error.

RALPH WOODS, Esquire, 717 Tacoma Building, Tacoma, Washington,

CHARLES L. WESTCOTT, Esquire, 719 Tacoma Building, Tacoma, Washington,
Attorneys for Defendant in Error. [1*]

In the United States District Court, Western District of Washington, Southern Division.

No. 1980.

ALEXANDER MATSON,
Plaintiff,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Corporation,
Defendant.

Praecipe for Transcript of Record.

To the Clerk of the Above-entitled Court.

You will please prepare a transcript of the record in this cause to be filed in the office of the clerk of the United States Circuit Court of Appeals for the Ninth Circuit, under the Writ of Error to said Court, including the following pleadings, proceedings and papers, to wit:

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*Page-number appearing at foot of page of original certified Transcript of Record.

Amended Complaint.
Answer to Amended Complaint.
Order Removing Cause to Above Court.
Reply to Answer.
Defendant's Requested Instructions.
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F. D. OAKLEY,
Attorney for Plaintiff in Error.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 3, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [3]

Amended Complaint.

The above-named plaintiff complains of the above-named defendant and alleges:

I.

That the said plaintiff is a resident of Tacoma, Pierce County, Washington of lawful age, and prior to the happening of the matters and things hereinafter referred to was a strong and able-bodied man, earning and capable of earning Three ($3.00) Dollars per day.

II.

That the defendant is a corporation duly organized and existing under and by virtue of the laws of the State of New Jersey and is a common carrier of passengers, and as such common carrier maintains and operates an electric railway in Pierce County, Washington, and does business therein and has a station on said line at which it receives and delivers passengers at a place known as Pacific City.

III.

That on the 30th day of March 1915, plaintiff went to the station of the defendant, at Pacific City, for the purpose of boarding the train of defendant for transportation to Tacoma; That the said train, arriving at the said station, stopped and discharged one passenger, and that thereupon, while the said train was at a standstill, plaintiff attempted to board the same, but that while he was in the act of boarding the said train it was suddenly started by a jerk which threw plaintiff under the wheels of the rear car of said train, which ran over his left foot and mangled and cut a part thereof so that it became necessary that a part of the foot should be amputated and removed. [4]

IV.

That the said injury to plaintiff was caused by the negligent starting of the said train by defendant, its agents and servants, without warning to him, while plaintiff was in the act of boarding the same and while he was holding one of the rods provided for the purpose of aiding and assisting in the boarding of the said train, and to the further negligence of the defendant in not permitting the train to remain stationary a sufficient length of time for plaintiff to board it, and in not providing some means whereby the said train would remain stationary long enough for the plaintiff to board it, and in not providing for some means by which the said train would be kept stationary while it was being boarded by plaintiff; and to the further negligence of the defendant in not providing some means by which the motorman or the operator of the said train was informed and knew that the plaintiff was in the act of boarding it.

V.

Plaintiff further alleges that by reason of the said accident and injury to him he has suffered great mental and bodily pain and suffering and that he will continue to suffer the same during the balance of his life time; that by reason of the mashing and crushing of a part of his foot and the subsequent amputation thereof, he is now permanently crippled and that he will be a cripple for the balance of his life; that he is unable to engage in any sort of labor and is unable to walk without the aid of crutches or a stick, and that he is unable to stand with his weight, or any considerable part thereof, resting on

his crippled foot without great pain and suffering, all of which disabilities and pain will continue in the future and be permanent. [5]

WHEREFORE, plaintiff alleges that he has been damaged in the sum of Ten Thousand ($10,000.00) Dollars and prays judgment against the said defendant for said sum, together with his costs and disbursements in this behalf expended.

RALPH WOODS,
HUDSON, HOLT & HARMON,
Attorneys for Plaintiff.

State of Washington,
County of Pierce,—ss.

Alexander Matson, being first duly sworn, deposes and says: That he is the plaintiff named in the above and foregoing amended complaint; that he has read the same, knows the contents thereof and believes the same to be true.

ALEXANDER MATSON.

Subscribed and sworn to before me this 21st day of January, 1916.

RALPH WOODS,
Notary Public in and for the State of Washington,
Residing at Tacoma.

Consent is given to the filing hereof of service by receipt of a copy hereof admitted this 21st day of Jan., 1916.

J. A. SHACKLEFORD,
F. D. OAKLEY,
Attorneys for Def.

Filed in Superior Court. Jan. 27, 1916. E. F. McKenzie, Clerk. By G. F. M., Deputy.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 25, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [6]

Answer to Amended Complaint.

The defendant above named, for answer to plaintiff's amended complaint herein, alleges:

I.

For answer to Paragraph I of the amended complaint, this defendant says it has no knowledge or information sufficient to form a belief as to the facts alleged therein, and therefore denies the same.

II.

For answer to Paragraphs 3, 4, and 5 of said amended complaint, this defendant denies each and every allegation therein contained, and particularly denies that the plaintiff was damaged in the sum of Ten Thousand Dollars ($10,000.00), or in any other sum whatever.

Further answering, and as a further, separate and first affirmative defense, this defendant alleges:

I.

That if the plaintiff sustained any injuries at the time and place alleged in his amended complaint herein, concerning which this defendant has no information, and therefore denies the same, the same were caused and occasioned by reason of the careless and negligent conduct of the plaintiff himself, and

not otherwise, in that he heedlessly and recklessly undertook to board the said train in an improper manner while the same was in motion, and at the time said train was put in motion neither plaintiff nor any other passenger was on the platform of said station or attempting to board the said train when the same was put in motion, and that if plaintiff attempted to board said train he did so after the same was put in motion, and after the doors and vestibule of said train had been [7] closed, and that plaintiff failed to exercise his mental faculties in any way to observe, avoid, and escape the risks and dangers of attempting to board a moving train, and that he failed to take proper care to provide for his personal safety.

WHEREFORE defendant prays that this case be dismissed, and that it recover its costs and disbursements herein expended.

F. D. OAKLEY,
Attorney for Defendant.

Copy of Answer received this 18 day of May, 1916.
RALPH WOODS.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. May 18, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [8]

Order Approving Bond and Removing Cause to United States District Court.

(From the Superior Court of the State of Washington for Pierce County.)

This cause coming on duly and regularly to be

heard this 26th day of January, 1916, upon the petition of the defendant, Puget Sound Electric Railway Company, for the removal of this cause from this court to the United States District Court for the Western District of Washington, Southern Division, and it appearing to the Court that written notice of this petition and hearing and of the bond for removal filed herein has been given to the plaintiff herein prior to the filing of said petition and bond, and it appearing to the Court from said petition that said suit is entirely between citizens of different states, and that the amount in controversy in said action exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00), and the petitioner having filed and tendered with its said petition a bond with good and sufficient surety in the sum of Five Hundred Dollars ($500.00) conditioned as required by law, and being advised in the premises:

IT IS ORDERED that the said bond be and the same is hereby approved; that this Court proceed no further in this cause, and that the same be and hereby is removed to the District Court of the United States, for the Western District of Washington, Southern Division, and that the Clerk of this Court be and he hereby is ordered and directed to prepare a record and to certify and transmit the same to the Clerk of the United States District Court for the Western District of Washington, Southern Division, within thirty days from the [9] date of the filing of said petition.

Done in open court this 26th day of January, 1916.

M. L. CLIFFORD,
Judge.

Ent. Jour. 151, page 591, Dept. 4, 1916.

Filed in Superior Court. Jan. 26, 1916. E. F. McKenzie, Clerk. By Piper, Deputy.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 25, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. **[10]**

Reply.

The plaintiff for reply to the affirmative matter set up in the above case, denies each and every allegation therein contained.

HUDSON, HOLT & HARMON,
RALPH WOODS,
Attorneys for Plaintiff.
Rooms 718–19 Tacoma Bldg., Tacoma, Wash.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 28, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. **[11]**

Defendant's Requested Instructions.

Comes now the defendant at the close of all the testimony and requests the Court to direct the jury to find a verdict in favor of the defendant.

Should the Court refuse to grant the above request, the defendant without waiving the same, asks that the following instructions be given:

I.

I instruct you that the law presumes nothing in favor of the plaintiff or of his allegations in the complaint, and the burden of proof is on him at all times to establish affirmatively by the fair preponderance of the evidence his allegations of negligence against the defendant company. The fact that an accident may have occured to him and that he may have sustained injury while attempting to board defendant's interurban train at Pacific City, on or about the 20th day of March, 1915, raises no presumption of liability against the defendant company. Plaintiff must prove by the fair preponderance of the evidence that while defendant's train was at a standstill at Pacific City, plaintiff attempted to board said train and while in the act of boarding the same it was suddenly started by a jerk which threw plaintiff under the rear wheels of said train, causing the injury complained of, and if you find from the evidence on this point that the evidence for the plaintiff and the evidence for the defendant is evenly balanced in your minds, your verdict must be for the defendant, because the plaintiff has failed in his proof. **[12]**

II.

Before the plaintiff can recover, he must also go further and follow this proof with other proof and must likewise establish by the fair preponderance of the evidence, that the injuries which he claims he suffered are the direct and proximate result of the negligence of the defendant's employees, as set forth in the complaint, and if the evidence on this

point is in your minds, evenly balanced both for the plaintiff and against the plaintiff, your verdict must be for the defendant, because the plaintiff has again failed in his proof.

III.

The defendant charges in its answer that if the plaintiff sustained any injuries at the time and place alleged, that it had no information concerning the same and therefore denies that plaintiff sustained any injuries at the time and place and in the manner alleged, and defendant alleges further that if plaintiff sustained any injuries as complained of, that the same were caused and occasioned by reason of the careless and negligent conduct of the plaintiff himself, and not otherwise, in that he heedlessly and recklessly undertook to board said train in an improper manner, while the same was in motion and that at the time said train was put in motion at Pacific City, neither the plaintiff nor any other passenger was on the platform of said station attempting to board the said train, and that if plaintiff attempted to board said train he did so after the same was put in motion and after the doors and vestibule of said train had been closed, and that plaintiff failed to exercise his mental faculties in any way to observe, escape and avoid the risks and dangers of attempting to board a moving [13] train and that he failed to take proper care to provide for his personal safety.

IV.

You are instructed that the plaintiff in this case would not be a passenger within the meaning of

the law unless you should find from the evidence that he was actually attempting to board said car exercising reasonable care and prudence on his part before the conductor gave the signal for the car to start, or that said plaintiff had made known his intentions to board said train by signalling the motorman or conductor, or was standing in such a position as to indicate his intentions to board said train in such manner as reasonably prudent and careful persons ordinarily board interurban trains, under like circumstances, and that the conductors either saw or in the exercise of reasonable care should have seen his intentions so to do, before signalling for said train to start.

V.

You are further instructed that if you believe from the evidence that at the time of this accident the plaintiff attempted to board said car while the same was in motion he cannot recover damages from the defendant, because he assumed the risk of being injured by attempting to board said train. The defendant company cannot be held liable for mistakes in judgment made by passengers in attempting to board moving cars.

VI.

You are instructed that if you believe from the evidence that the train of the defendant was put in motion before plaintiff had attempted to board the same, [14] this fact would not authorize or make it right for the plaintiff to commit an act of negligence in attempting to get upon said car to prevent being left behind.

VII.

If you find from the evidence that both the plaintiff and the employees of the defendant company were negligent and that this accident resulted from the joint or concurring negligence of the parties, that is, the negligence of both plaintiff and defendant, concurrently contributing to the injury, then your verdict must be for the defendant. The law does not undertake to deal with relative degrees of negligence, and even tho the defendant's employees were guilty of negligence, if you also find that the plaintiff's negligence contributed to the injury, then your verdict must be for the defendant, regardless of the ratio or proportion of negligence of the respective parties. Where the plaintiff himself so far contributes to the accident by his own negligence or want of ordinary care and caution, that but for such negligence or want of ordinary care and caution the accident would not have occurred, plaintiff cannot recover, and your verdict must be for the defendant. [15]

VIII.

You are instructed that misconduct or negligence in the discharge of duty is never presumed, but must be proven. The presumption is that the person charged with a performance of a duty has discharged that duty honestly and faithfully, so in this case, if you find that the train came to a full stop at Pacific City, the law presumes that the train was not started forward by the employees of the defendant company, until the exercise of proper care and caution on their part to ascertain whether or not anyone was

attempting to board said train.

IX.

The burden is upon the plaintiff to show by the fair preponderance of the evidence that the injuries he complains of have resulted from the accident, not merely that they may have so resulted. You are not justified in awarding him for purely speculative injuries, that is to say, for results which may or may not happen, and you will allow the plaintiff nothing for future pain and suffering, unless you are satisfied by a fair preponderance of the evidence that future pain and suffering are reasonably certain to result from the injuries.

X.

If you find for the plaintiff in this action, you will confine your verdict to such an amount as will compensate him for actual loss and damage in the case. You will not allow anything by way of punishment or exemplary damages. There should not be any idea of punishing the defendant in your minds, but simply that of compensating the plaintiff for his loss, if, as I said before, you should find from the evidence in the case that he is entitled to recover anything. **[16]**

XI.

You are the judges of the credibility of the witnesses. It is for you to determine from all the circumstances attending the testimony of any witness how much credibility is to be accorded his statements. If you find from the testimony that the plaintiff himself, or any of the witnesses, made statements at any other time or place at variance with his

statements on the witness-stand regarding any of the material matters testified to by him, it is for you to consider this fact in determining to what extent this fact tends to impeach either his memory or his credibility.

F. D. OAKLEY,
Attorney for Deft.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 29, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [17]

Verdict.

We, the Jury empanelled in the above-entitled cause, find for the plaintiff and assess his damages at the sum of Thirty-five Hundred Dollars ($3,500.00).

A. M. GODDARD,
Foreman.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jun. 7, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [18]

Judgment.

This matter came on regularly for trial on the 5th day of June, 1917, in the above-entitled court before the Hon. Edward E. Cushman, Judge of said court, and a jury, the plaintiff being represented by Chas. L. Westcott and Ralph Woods, and the defendant being represented by F. D. Oakley. After the introduction of the evidence offered and adduced by the

plaintiff and by the defendant, and counsel for the respective parties having argued the matter to the jury, and the Court having instructed the jury on the law, the case being closed, the jury retired to consider its verdict; after consideration thereof the jury found for the plaintiff and assessed his damages in the sum of thirty-five hundred ($3,500) dollars,—

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the plaintiff, Alexander Matson, do have and recover from the defendant, Puget Sound Electric Railway, a corporation, the sum of Thirty-five Hundred ($3,500) Dollars, together with his costs taxed herein in the sum of One Hundred Eleven and 30/100 Dollars.

Done in open court this 8th day of June, 1917.

EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jun. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [19]

Petition for New Trial.

Comes now the defendant in the above-entitled action and petitions this Honorable Court for an order vacating and setting aside the verdict of the jury and judgment made and entered in the above-entitled action on the 7th day of June, 1917, and granting a new trial for the following causes, materially affecting the substantial rights of the defendant:

I.

Misconduct of the jury.

II.

Excessive damages appearing to have been given under the influence of passion or prejudice.

III.

Insufficiency of the evidence to justify the verdict or other decision, in that the evidence proves conclusively that the plaintiff attempted to board defendant's train after the same had been put in motion and after the only passenger to get off at the station in controversy had alighted and the doors of the vestibule had been closed by the employees of the defendant.

IV.

Irregularity in the proceedings of the plaintiff and his attorney by which the defendant was prevented from having a fair trial, in that the attorney for the plaintiff intimidated one of defendant's witnesses by threatening to have him arrested for perjury if he should testify in the case and in attempting to intimidate witnesses, and made statements before the jury that said defendant's witness had perjured himself at the former trial. [20]

V.

Error in law occurring at the trial as follows:

The Court erred in giving the following instruction to the jury:

> "But the passenger and the plaintiff in this case by the same rule is not held to that high degree of care, but he is bound to exercise ordinary care for his own safety when he attempts to

board a train, and if he fails to exercise ordinary care for his own safety and because of that failure on his part to exercise ordinary care he is injured, why then he cannot recover, even though the defendant company or its servants are negligent."

The Court erred in refusing to give defendant's requested instruction #5 as follows:

"You are further instructed that if you believe from the evidence that at the time of this accident the plaintiff attempted to board said car while the same was in motion, he cannot recover damages from the defendant, because he assumed the risk of being injured by attempting to board said train. The defendant company cannot be held liable for mistakes in judgment made by persons in attempting to board moving cars."

The Court erred in refusing to give defendant's requested instruction No. 6 as follows:

"You are instructed that if you believe from the evidence that the train car of the defendant was put in motion before plaintiff had attempted to board the same, this fact would not authorize or make it right for the plaintiff to commit an act of negligence in attempting to get upon said car to prevent being left behind."

F. D. OAKLEY,
Attorney for Defendant. [21]

Receipt of a true copy thereof, together with true copies of the exhibits recited therein as being at-

tached thereto, hereby is admitted in behalf of all parties entitled to such service by law or by rules of court, this 16 day of July, 1917.

RALPH WOODS,
C. W. L.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Jul. 16, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [22]

Journal Order Denying Motion for New Trial and Extending Time for Serving and Filing Proposed Bill of Exceptions.

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma, on the 23d day of July, 1917, the Honorable Edward E. Cushman, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the Journal of said court, to wit:

No. 1980.

ALEXANDER MATSON

vs.

PUGET SOUND ELECTRIC RY.

This cause coming on at this time on a hearing for a motion for new trial, the motion was denied, exception allowed and defendant allowed thirty days to serve and file bill of exceptions. [23]

Bill of Exceptions.

Transcript of Evidence and Proceedings.

BE IT REMEMBERED, that heretofore, and on, to wit, the 5th day of June, 1917, the above-entitled cause came duly and regularly on for hearing before Hon. E. E. Cushman, Judge of the above-entitled court, and a jury:

The plaintiff herein being represented by his attorneys and counsel, Ralph Woods and Charles Wescott;

The defendant herein being represented by its attorney and counsel, Frank Oakley, Esq.;

And thereupon the following proceedings were had and done, to wit:

Testimony of Alexander Matson, Plaintiff, in His Own Behalf.

ALEXANDER MATSON, the plaintiff, being called and sworn in his own behalf, testified as follows:

Direct Examination.

(By Mr. WOODS.)

My name is Alexander Matson. I was born in Finland in 1889 and came to the United States about eleven years ago. I worked for the New York Central on a pile-driver and at many other places. About seven years ago I came to the Pacific Coast. I worked in California, Idaho, Oregon and Washington in logging camps, sawmills, smelters and at other common labor. On March 20th, 1915, I was in Seattle and went from there to Pacific City, ar-

(Testimony of Alexander Matson.)

riving at the interurban station at about nine o'clock P. M. I waited for the interurban train going to Tacoma which came along about eleven o'clock. When [24] the train came in to Pacific City it stopped right at the depot and let one man off the car so I was standing at the lower end of the depot, the end towards Seattle. I did not signal the cars because I did not know they had any signal-post there at the depot at that time, because I had never been at a way station between Tacoma and Seattle before, so I was standing at the lower end of the depot when the train came in and stopped, and one man got off the train, and I started to go up to board the car, and I grabbed the handhold with my right hand, and I was going to step on the car, like a man always used to do, when he gets on a car, so the train started up with a jerk, and she pulled me then, overbalanced me, and throwed me around, and the wheel went sideways across over my foot. They took me to a hospital in Tacoma, and I can just step a little on my foot, I cannot walk on it and still use my crutches. My health prior to this occasion was good. After the train went by I crawled up and tried to stand up on the platform and then crawled inside of the depot and laid down on the bench. I hollered a couple of times for help, and finally two men came with a lantern. I could not say how many minutes the train stopped, but it did not stop very long, just an instant to let a passenger alight. I did not see the conductor at any time. At the time of the accident I was 26

(Testimony of Alexander Matson.)

years old and from that time until March, 1916, was living in Pierce County. I am now living in Seattle.

Cross-examination.

(By Mr. OAKLEY.)

I was standing close to the turnstile about two or three yards from the turnstile, when the train stopped. Before the [25] accident "I went a couple of times through that turnstile." I passed the man who got off the car when he was a little way from the turnstile. I had just taken a few steps and he passed me on the platform. I did not run to catch the car, just took an ordinary walk. The car was stopped when I took hold of it, and I didn't notice the conductor or collector or motorman at all. The vestibule was open. The car stopped about in front of the depot. Mr. Straub came to the hospital to see me a day or two after the accident. Mr. Woods brought up a contract for this case and the first complaint was filed the following Saturday, March 27th.

Defendant's Exhibit "H" is the original complaint filed in the above court March 17th, 1915.

Exhibits "A" and "B" are photographs of the depot at time of accident.

I was never at the station before and didn't attempt to flag the train, I supposed all trains stopped there. I was six feet from turnstile and didn't think the train would stop there and I started up.

A. I stayed right there and waited for the car to stop, to slow down.

Q. And when the man got off, you started ahead?

(Testimony of Alexander Matson.)

A. I started to go up to take that car.

Q. Now, just take a look at Defendant's Exhibit "B." Now, tell me the point on that photograph where you passed this man when you started up to catch the car.

A. Where towards that man?

Q. Yes. A. Just a little way up.

Q. Would it be about the point "X" in that circle? [26]

A. It might have been about that, a few steps. I could not exactly say the distance.

Q. Now, last fall didn't you say this in answer to this question:

> "Q. Now, just look at this exhibit. I want you to mark with a pencil when you passed the man on the platform. A. I think I passed him just here (indicating). Q. Will you mark that 'X' with a circle around it? Now, where you put that 'X' with a circle around it on Defendant's Exhibits 'A' and 'B' is where you passed this man that got off the train, this man that you passed? A. Yes."

Would you say that would be right now, the same as you testified before?

A. Yes, but I cannot say exactly the distance.

Q. As you recall it, that is where you passed this man? A. Yes, sir.

Q. Now, here is another question: "Q. How many feet ahead had you walked when you passed him?" "A. I had not walked, I was just standing up against the end of the platform." Do you remember testify-

(Testimony of Alexander Matson.)

ing that way? I want you to understand it: "How many feet ahead had you walked when you passed him? A. I had not walked, I was just standing up against the end of the platform." Do you remember of answering that that way?

A. Yes, I remember it when I was standing down there, and then I started to walk up to get the car.

Q. You testified this morning that you walked and he walked? A. Yes, sir. [27]

Q. You testified the other time, "I had not walked. I was just standing up against the end of the platform." Wasn't that your testimony before?

A. I do not remember.

Q. "Q. You had not started ahead? A. No, sir. Q. He passed you right where you stood? A. No, sir, I was just starting to go up there. Q. How far did you walk? A. A couple of steps only. Well, I started to go up and he walked past by me. Q. That would be how many yards from the turnstile where you passed? A. It must have been something like three yards from the turnstile." Do you remember that? A. Yes, sir.

Q. That is about right, is it not?

A. Yes, I think that is about right.

I saw a man when he came from the car, he could not have come from any place else. I was down on the platform and it was dark there and I can't say exactly what step it was he got off of. I cannot say how he stepped off, but he got off the car. I passed him back near the turnstile. When I got hold of the car with my right hand it started up with a jerk and

(Testimony of Alexander Matson.)

pulled me ahead and overbalanced me. I picked myself up from off the platform and crawled right up on the end of the platform. I had been lying right on the ground there. My head was lying towards Tacoma. When I boarded the car the door of the car was right opposite the door of the depot. The wheels on the last truck ran over me. The company paid all doctor, hospital and medical bills.

On the day of the accident I left Seattle and went to [28] Kent, and walked from Kent to Auburn. I was in Auburn the best part of the day, leaving there between four and five o'clock in the afternoon, and then walked on the Milwaukee tracks to Pacific City, a distance of three or four miles, and got at Pacific City about nine o'clock. When I got there I made up my mind to go to Tacoma, and had money to pay my fare to Tacoma.

Testimony of J. W. Shull, for Plaintiff.

J. W. SHULL, being called and sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

In March, 1915, I lived at Pacific City. About twenty minutes to twelve I went to the depot at Pacific City after returning from Auburn. Saw a man with a smashed foot in the depot. He was lying on the bench on the southwest corner. One spot of blood was in the depot right opposite his foot. There was a spot on the platform right beside the steps that

(Testimony of J. W. Shull.)

go into the freight house. These steps are shown on Defendant's Exhibit "A and B."

Cross-examination.

(By Mr. OAKLEY.)

Lights were burning on the depot and I had no difficulty in seeing the platform as there was light there. I had a confectionery store about sixty or sixty-five feet from the turnstile, that night in charge of my father and the lights were burning in front of my store when I got there. These lights consist of two Mazda globes in a cluster and three inside the store and burn all the time. I could see all the [29] way from the store to the turnstile.

Recross-examination.

(By Mr. OAKLEY.)

I saw Roy Bungardner that night in Auburn. He was going to catch the Interurban, a cluster of lights have been put near the depot on a pole since the accident.

Testimony of William Maurer, for Plaintiff.

WILLIAM MAURER, being called and sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I was the conductor in charge of the Puget Sound Railway on March 20th, 1915. We left Seattle at 10:05 o'clock. We might have been a couple of minutes or so late. We got to Pacific City somewhere around six or seven minutes after eleven.

Testimony of Onnie Weaver, for Plaintiff.

ONNIE WEAVER, being called and sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I am seventeen years old. On March 20th, 1915, I was in Tacoma on the last car leaving for Seattle. It was a rather dark night.

VIEW OF PREMISES.

The jury visited the scene of the accident and viewed the premises at Pacific City, pursuant to the direction and order of the Court. [30]

Testimony of Henry Martin, for Defendant.

HENRY MARTIN, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I live at Renton and have been employed for the defendant company as motorman for seven years and was motorman in charge of the train in controversy. We left Seattle at 10:05 and arrived at Pacific City about 11:00 o'clock. The number of the motor was 516. The train consisted of two cars. One in charge of conductor Maurer and the other in charge of Mr. McClintock. While pulling into Pacific City I got a signal to stop there and made just a short stop of twenty-five or thirty seconds and then got a signal to go ahead and started it up. The headlights were burning and also the lights at the station. I did not

(Testimony of Henry Martin.)

see anyone on the platform or about there at the time. The cars are each about fifty-five feet long and the front end of the motor was stopped fifteen or twenty feet south of the south end of the platform and south of the fence. I started the car just as usual, one point on the controller right after the other. It is impossible to start the motor in such a manner as to throw a man a distance of six or eight feet while attempting to board the car. If the car is started suddenly the power is thrown off by the automatic circuit breaker. I did not see any passengers get off the car at the station. I was on the opposite side of the car from the platform.

Cross-examination.

(By Mr. WOODS.)

I did not hear of the accident until the next day. That [31] night I went back to Seattle on the local train and do not remember whether I stopped at all the stations or not on the return trip. I did not see anyone on the platform. My attention was called to the accident the next afternoon. I know that I did not start until I got a signal, but do not know where the conductor was when the signal was given. We were about five minutes late at Pacific City. When the train pulls into the station the lights are not dim because we are drifting for some distance before we start to stop. When we start the lights are dim.

Testimony of H. E. McClintock, for Defendant.

H. E. McCLINTOCK, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I live in Sacramento, California, and am employed as conductor on the Northern Electric Railway. At the time of the accident in controversy I was the conductor on the head car. We left Seattle at 10:05. After leaving Algona conductor Maurer on the rear car gave a signal with the bell cord to the motorman to stop at Pacific City. We stopped; one passenger alighted from the rear car, after which I looked out and saw there was nobody to board the train and I stepped over on the other side of the vestibule, pulled the bell cord for the motorman to go ahead and we started. I stepped back into the vestibule and looked out again. After leaving Pacific City the vestibule doors were closed on each car. I raised up the trap and opened the outside door. I was in the vestibule when the car stopped at Pacific City and only one passenger got off and nobody [32] got on, and nobody was waiting on the platform to board the train. The car started in the ordinary manner without any jar or jolt at all. Algona is about two miles from Pacific City and Auburn about three miles from Pacific City. Defendant's Exhibit "D" is a photograph of the rear end of motor car Number 516 in my charge at that time. I didn't hear anything of the accident until the following day.

(Testimony of H. E. McClintock.)

Cross-examination.

(By Mr. WOODS.)

We were about two or three minutes late at Pacific City; neither of the conductors got off the train because it was not necessary. My attention was not called to this accident until the following afternoon.

Redirect Examination.

(By Mr. OAKLEY.)

One of our motormen, W. B. Crouch, lives at Pacific City and had an early run out of Tacoma in the morning and he came in on one of the evening trains to take his run out in the morning. I had been working on this run for several months.

Testimony of William Maurer, for Defendant.

WILLIAM MAURER, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I live in Seattle. Have been working as conductor for the defendant company about twelve years and was in charge of the rear car of the train in controversy. A passenger got on at Auburn. Trains stop at Pacific City only on signal. We stop only when we have passengers to let off or pick up. When we approached Pacific City the passenger got up and [33] came to the front door and opened it just as the train came in and stopped. I opened the trap which covers the steps on the inside flush with the platform and then I stepped to one side to let him off. The door cannot be opened without the trap

(Testimony of William Maurer.)

down. The passenger was standing on the platform ready to get off and nobody was on the station platform to board the train. The lights of our car and the lights on the station light up the platform so you could see anyone there. I did not see anyone walking from the rear of the car as if they were going to approach it and there was nobody signalling or attempting to board the car when the signal was given to go ahead. As soon as the passenger got off I looked to see if there was anyone to get on and there was no one there, and I gave the signal to McClintock with my hand to go ahead and he pulled the bell. Just as he pulled the bell I closed the door. The car did not start with any violent or unusual jerk. I did not hear of this accident until 10:00 the next day when the agent called me up.

Cross-examination.

(By Mr. WOODS.)

I was not back in the middle of the car when the car started. I did not get off the car that night. We are always two or three minutes late and we might have been two or three minutes late this time. I can tell exactly where I stood when we were at Pacific City. A signal board is provided at the station for passengers wanting to board the car. If we do not get a signal we think they are only standing there.

Redirect Examination.

(By Mr. OAKLEY.)

It is the duty of both conductors to watch signals of [34] passengers given for boarding the train.

(Testimony of William Maurer.)

At night this signal was a white light and in day times the arm moves out. The motorman's duty is to watch that signal.

Recross-examination.

(By Mr. WOODS.)

The motorman does not start without orders. The conductors give the signal to start.

Testimony of F. G. Woodward, for Defendant.

F. G. WOODWARD, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I am draftsman for the defendant company and I prepared a map, Defendant's Exhibit "E," showing location of the tracks, station, etc., at Pacific City and drawn to a scale of one inch to five feet.

Cross-examination.

(By Mr. WOODS.)

This map was drawn by me November 27th, 1915. I do not know what changes have been made in the platform or turnstile.

Testimony of John A. Jackson, for Defendant.

JOHN A. JACKSON, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I am assistant claim agent for the defendant company, and took Defendant's Exhibits "A," "B,"

(Testimony of John A. Jackson.)

"F" and "G" three days after the accident. They show the condition of the platform, depot and turnstile at the time of the accident. I do not [35] know of any changes except the replanking, putting in new timbers having been made there since.

Testimony of E. M. Newcomb, for Defendant.

E. M. NEWCOMB, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I live at Sunnyside, Washington. At the time of this accident was residing in Pacific City, in the building marked on the exhibit "C. D. Hillman." My family and father-in-law O. H. Fuller were living with me. Mr. Fuller has since died. After the train left the station sometime I heard someone hollering. After repeated calls I got up and finally went over to the depot and found the plaintiff in the station on the south of the door lying on the bench head pointing east. That is, away from the track. He told me he had got a foot smashed. He was drunk. The first thing I got was a big whisky breath right in my face. I then went back to the house, and took Mr. Fuller with me, then I walked to Algona for Doctor Southward, and brought the doctor back with me. The doctor opened up his medicine case, handed the man a half pint of whisky and he drank nearly all of it. The doctor gave him an injection of some kind to deaden the pain, bound up his foot. We then put him in the baggage-room

(Testimony of E. M. Newcomb.)

of a car coming from Seattle. When I first went across the street three sixty-candle power lights were in front of the poolroom and lit up the whole street and lights in the depot [36] were all in good condition. Light enough so you could see, the inside of the depot was also light so that I could see him in there.

Cross-examination.

(By Mr. WOODS.)

The company paid my expenses for coming here as a witness. While living in Pacific City I worked on the Inter-County River Improvement for six months.

Redirect Examination.

(By Mr. OAKLEY.)

At present I am in the sheep business east of the mountains. I had my right hand cut off in a manufacturing plant in Seattle ten years ago.

Testimony of Roy Baumgardner, for Defendant.

ROY BAUMGARDNER, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. OAKLEY.)

I live in Namba, Idaho, with my father and mother working on their ranch. Have been there about three years. At the time of the accident I was living at Pacific City. On the night of the accident in controversy I got on the train at Auburn about 11:00, after having some dental work done. I was

(Testimony of Roy Baumgardner.)

in the front part of the rear car and recognize the conductor here in Court as the conductor in charge of the car I was in. As we were coming in to Pacific City the conductor opened the trap door in the vestibule and the door was then pulled in and I stepped off. I was standing right behind the conductor [37] as close as I could get without being in the road. When I stepped off the car there was nobody on the platform at any place or near the depot, and no one indicated any intention of boarding the car. I then went out of the turnstile going north and there was nobody on the platform while I was walking along it. When I got out of the turnstile I noticed a man across the track running towards the turnstile. He passed me about four feet from me. He was running towards the depot. The Interurban train was moving when I got to the turnstile. I looked back once and noticed a man who was inside the turnstile, and just as I looked back it looked to me like he was attempting to board the car. I was not sure because I did not pay so much attention. The lights were burning good and the road was lit up and I would have no difficulty in seeing a person on the platform but there was no one there. I first heard that the man was injured the next evening.

Cross-examination.

(By Mr. WOODS.)

I saw a man outside of the turnstile but did not recognize that man as Mr. Matson. If Matson passed me on the platform I did not see him.

Testimony of M. M. Shull, for Defendant.

M. M. SHULL, being called and sworn as a witness on behalf of defendant, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I live on a fruit ranch in Yakima County. At the time of the accident I lived in Pacific City. About 11:00 that night I was standing in front of my son's store which I was [38] tending for him. This store is about sixty-five feet from the depot. I closed the store about 11:00 or a few minutes after, and saw the Interurban come in from Seattle to Tacoma. There were two lights on the outside of the store next to the street. They burn all night and throw a very good light directly across the road. I had just come out of the door when the train was standing there. I could see the track, and when I first saw Roy Baumgardner he was about the North side of the street just crossing the road. I saw another man just a moment before. He was running in the road towards the depot right about the middle of the street and the train was standing there then. I did not see the train start up and didn't pay any further attention to this man. I saw this man about ten or fifteen seconds before I saw Roy. I did not see him go through the turnstile or as far as the turnstile. I saw this man the following Monday at the Tacoma General Hospital. That is, I saw a man, Dr. Wing, at the hospital, who told me this was the same man I saw running.

(Testimony of M. M. Shull.)

Cross-examination.

(By Mr. WOODS.)

I did not see Matson run around the back of the car. I saw Baumgardner just after I saw this man running. I was standing right in front of the store on the porch. There is some lights on the poles shown at the point "J" on Defendant's Exhibit "E," those lights were put in later. There were lights on the depot. This man when I saw him was about the middle of the street shown on the map, going towards the platform. Baumgardner was on the North side of the street. I think he went straight across the street from the turnstile. I did not see Baumgardner and this man pass, I saw the man running first; then in probably fifteen seconds I saw Baumgardner. I saw [39] Baumgardner at the point I marked with the letter "P" on the map, and "P-prime" at the place where the man was running. I could see the man because there are two strong electric lights on the building and lights on the depot.

Redirect Examination.

(By Mr. OAKLEY.)

Q. When you fixed this point "P," P-prime, on the map, what did you mean by that? Did you mean them to be the exact location or just approximately? A. I did not mean it to be exact.

Q. It may be two or three feet off or more than that? A. It might be.

Q. Now, you have no interest in this trial?

A. No, sir, I have not.

(Testimony of M. M. Shull.)

Q. Now, did you have a conversation this morning with Mr. Woods in reference to what would happen to you if you testified this morning?

A. Mr. Woods spoke to me in the hall out there this morning.

Q. What did he say with reference to your appearing here as a witness?

A. He said if I lied like I did the other time he would send me to the penitentiary.

Q. When did he tell you that?

A. About an hour ago.

Q. Was Roy Baumgardner there when he told you that?

A. He might have been in the hall, I did not notice.

Q. He told you if you lied like you did the other time he would have you arrested for perjury, didn't he?

A. Yes, and have me sent to the penitentiary.

(Witness excused.) [40]

The COURT.—(Addressing Mr. Woods.) If he lied the other time, why have you not had him arrested before this time?

Mr. WOODS.—Your Honor will remember that in the other trial—(interrupted).

Mr. OAKLEY.—I do not think it is necessary to have any explanation.

The COURT.—If you made that remark in good faith—(interrupted).

Mr. WOODS.—I made that remark in good faith.

The COURT.—Why didn't you have him arrested when this trial came off? Why were you holding it

(Testimony of M. M. Shull.)

over him when he was a witness in this case?

Mr. WOODS.—The testimony is practically the same now as it was before, that he stood there fifty or seventy-five feet away—he testified that he recognized the witness—I understood the witness to testify in the other trial that he recognized this man—(interrupted).

The COURT.—I did not ask you to rehash this testimony, but if you thought he had perjured himself and if you were able to prove it, it would seem to be your duty to start that prosecution and not try to influence his testimony in this trial by talking to him about it.

Mr. WOODS.—Well, all I want is the truth, and I cannot see where he is telling the truth.

Mr. OAKLEY.—It is an attempt to intimidate a witness.

DEFENDANT RESTS. [41]

Testimony of A. E. Southward, for Plaintiff.

A. E. SOUTHWARD, being called and sworn as a witness on behalf of plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

At the time of this accident I lived at Algona and attended the plaintiff when he was injured at Pacific City that night. He was not drunk at the time I saw him and I did not smell any liquor on his breath. I gave him some whiskey at the time.

Testimony of Onnie Weaver, for Plaintiff.

ONNIE WEAVER, being called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I am acquainted with Mr. Newcomb and have known him two or three years. His general reputation for truth and veracity is not a very good reputation.

Cross-examination.

(By Mr. OAKLEY.)

I am seventeen years old.

Testimony of W. F. Wells, for Plaintiff.

W. F. WELLS, being called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I live in Pacific City and am acquainted with Mr. Newcomb. His general reputation for truth and veracity is pretty bad. [42]

Testimony of John Erickson, for Plaintiff.

JOHN ERICKSON, being called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I have lived in Pacific City and have known Ernest

(Testimony of John Erickson.)

Newcomb for about three years. His general reputation for truth and veracity is not very good.

Testimony of W. S. Shull, for Plaintiff.

W. S. SHULL, being called and sworn as a witness on behalf of the plaintiff, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I have known Ernest Newcomb while I lived in Pacific City. I do not know his reputation only just rumors I have heard.

Testimony of Alexander Matson, Plaintiff in His Own Behalf.

ALEXANDER MATSON, the plaintiff, being recalled and sworn in his own behalf, testified as follows:

Direct Examination.

(By Mr. WOODS.)

I was not drunk on the night I was injured and had not been drinking at all on the night of the accident. I was not across the track behind the train on the other side from the depot.

The following occurred during argument of counsel to the jury:

Mr. WOODS.—In these days and age, there are too many [43] silk-stockinged men looking for soft jobs, and he is a laboring man—(interrupted).

Mr. OAKLEY.—I object to that.

The COURT.—Objection sustained.

Mr. WOODS.—If I have not been the suave actor

(Testimony of Alexander Matson.)

that the attorney for the defendant is, do not take it out of my client. I am a common ordinary lawyer, and I do the best I can, and I am not here defending damage suits for corporations.

Mr. OAKLEY.—I object to that.

The COURT.—Objection sustained.

* * * * * * * * * * *

Mr. WOODS.—It seems as though, in every case, at the beginning of every panel, there is generally one or two jurors that start out pig-headed, and are that way all through the panel.

Mr. OAKLEY.—We object to that.

The COURT.—Objection sustained.

Testimony of F. D. Oakley, for Plaintiff.

(By Mr. WOODS.)

Cause #1779 has been dismist. [44]

Instructions Requested by Defendant.

The defendant requested the Court in writing to charge the jury, among other things, as follows:

You are instructed to bring in a verdict in favor of the defendant.

"You are further instructed that if you believe from the evidence that at the time of this accident the plaintiff attempted to board said car while the same was in motion he cannot recover damages from the defendant, because he assumed the risk of being injured by attempting to board said train. The defendant company cannot be held liable for mistakes in judgment made by persons in attempting to board moving cars."

"You are instructed that if you believe from the evidence that the train car of the defendant was put in motion before plaintiff had attempted to board the same, this fact would not authorize or make it right for the plaintiff to commit an act of negligence in attempting to get upon said car to prevent being left behind."

The Court refused to give defendant's requested instruction for the jury to bring in a verdict in favor of the defendant whereupon the case was argued to the jury by counsel for the respective parties to the action. [45]

Instructions of Court to Jury.

At the close of the argument of counsel, the Court instructed the jury as follows:

The COURT.—Gentlemen of the jury, before you retire to consider what your verdict will be in this case, it is the Court's duty to instruct you concerning the law. You will take out with you to your jury-room the pleadings in this case. These pleadings consist of the amended complaint of the plaintiff, the answer of the defendant, and the reply to the answer which the plaintiff has interposed. Briefly, as has been explained to you already, the amended complaint which the plaintiff has filed, charges that the train of the defendant stopped at Pacific City, and that while it was standing still the plaintiff started to board the car, to get on board, but that while he was in the act of getting on the car it was started negligently by the defendant company, through its servants, and that because of the violent jerk of the car in starting, the plaintiff was

thrown so that his leg or foot was run over, and he was injured. The defendant company in its answer denies any knowledge of how the plaintiff came to be injured. It denies that he was injured through any negligence upon its part, and alleges that if he was injured at that time and place that he was injured solely because of his own negligence in the manner in which he was attempting to board a moving train. The plaintiff then in his reply denies that there was any negligence on his part, and those are the issues that you are called upon to determine. [46]

II.

As has been stated to you in the arguments, there is a difference in the degree of care which the defendant, the railroad company, owes to a passenger, and the degree of care which the passenger owes to himself. A common carrier of passengers is bound to the highest degree of care consistent with the practical operation of its road and trains, but before you can apply that rule, and hold the defendant to that high degree of care, it would be necessary to find, by a fair preponderance of the evidence, that the plaintiff had become a passenger. It is not every man who is running along the street to catch a train who is a passenger. Before he can be considered a passenger, he must have either gotten upon the train or be in such a position, either mounting the train, or having shown by his conduct that he desires to board the train, has to either be seen by the agents of the common carrier operating a train, and they have to realize that he desires to take the

train, or, at least, be in such a position and have so indicated his intentions that they should realize it if they were exercising due diligence in keeping a look-out to see who was going to board the train at their regular stop. But the passenger, and the plaintiff in this case, by the same rule is not held to that high degree of care, but he is bound to exercise ordinary care for his own safety when he attempts to board a train, and if he fails to exercise ordinary care for his own safety, and because of that failure on his part to exercise ordinary care, he is injured, why, then, he cannot recover, even though the defendant company or its servants are negligent. [47]

III.

Ordinary care means the care that an ordinarily careful and prudent person would exercise under like circumstances, and should always be proportioned to the peril and danger reasonably to be apprehended from a want of proper prudence.

IV.

Now, I believe I told you, but I will repeat it for fear my memory may be at fault, before the plaintiff can recover in this case he must have established by a fair preponderance of the evidence that the defendant company was negligent in the particular matter of which he complains in his amended complaint, which you will take out with you, and he must go further than that and show also by a fair preponderance of the evidence that this negligence, of which he complains, was the proximate cause of his injury. If the preponderance of the evidence on either of these points is with the

defendant company, or if it is evenly balanced on either of these points, so that you cannot say on which side it preponderates, why, your verdict would be for the defendant company.

V.

So far as the allegation in defendant's answer is concerned, that the plaintiff himself was to blame for this injury, that is, that he himself was negligent and failed to exercise ordinary care for his own safety, and that that was the cause of his injury, so far as that allegation is concerned, the burden of establishing that by a fair preponderance of the evidence is with the defendant, unless the plaintiff's own evidence has shown that he himself was guilty of contributory [48] negligence.

VI.

This expression that I have used in these instructions, "preponderance of the evidence," means the greater weight of the evidence. That evidence preponderates which is of such a character and so appeals to your reason and your experience as to create and induce belief in your minds, and if there is a dispute in the evidence, that evidence preponderates which so strongly appeals to your reason and experience as to create or induce belief in your mind, in spite of any evidence that may have been brought to oppose it.

VII.

I have used in these instructions, also, the expression, "proximate cause." The law says that every person is responsible for the natural and direct consequences of his voluntary acts, and is not

responsible for the results that do not flow naturally and directly from his voluntary acts.

VIII.

I will read to you certain instructions that I have been requested to give, and in so far as they may be a repetition of what I have already told you, you are not for that reason to allow yourselves to conclude that I deem them more important than those I do not repeat. They are simply repeated because I am endeavoring to be sure to cover all of the law of the case.

IX.

"The Court instructs the jury that when an electric interurban train stops at a station to discharge and receive passengers, while it is so stopped it invites persons at the station to enter the car and become passengers, and until that [49] invitation is recalled, any person actually beginning to enter it, is a passenger.

The Court further instructs the jury, if they believe from the evidence that the plaintiff was at the station for the purpose of embarking thereon as a passenger; and that the said interurban train stopped at the station and that the same was a usual and ordinary stopping place of said interurban, and that said interurban car was stopped by a servant or servants of the defendant company, and that the plaintiff, while it was so stopped, endeavored to get upon that said car, then the plaintiff, while so in the act of getting on said car was a passenger; and if the jury further believe from the evidence that the plaintiff was injured by the negligent

starting of the car while he was in the act of getting thereon in the exercise of such care as might reasonably be expected from a man of his age under the circumstances, then as to the issue of defendant's negligence, they should find for the plaintiff."

X.

"The Court instructs the jury that an interurban company, as a common carrier of passengers, is bound to run and operate its cars with the highest degree of care for its passengers, in view of all the facts and circumstances connected with each particular case."

XI.

"The jury is further instructed that a carrier of passengers stopping its train to take on or discharge passengers is bound to hold the same a reasonable length of time to allow an intending passenger to board with safety, providing those of the defendant's servants in charge of the car know, or should in the exercise of due care, know of such intention, and **[50]** in the absence of contributory negligence by a passenger, is liable for injury resulting from failure so to do."

XII.

"I instruct you that the law presumes nothing in favor of the plaintiff or of his allegations in the complaint, and the burden of proof is on him at all times to establish affirmatively by the fair preponderance of the evidence his allegations of negligence against the defendant company. The fact that an accident may have occurred to him and that he may have sustained injury while attempting to

board defendant's interurban train at Pacific City, on or about the 20th day of March, 1915, raises no presumption of liability against the defendant company. Plaintiff must prove by the fair preponderance of the evidence that while defendant's train was at a standstill at Pacific City, plaintiff attempted to board said train and while in the act of boarding the same, it was suddenly started by a jerk which threw plaintiff under the wheels of said train, causing the injury complained of, and if you find from the evidence on this point that the evidence for the plaintiff and the evidence for the defendant is evenly balanced in your minds, your verdict must be for the defendant, because the plaintiff has failed in his proof."

XIII.

"Before the plaintiff can recover, he must also go further and follow this proof with other proof and must likewise establish by the fair preponderance of the evidence, that the injuries which he claims he suffered, are the direct and proximate result of the negligence of the defendant's employees, as set forth in the complaint, and if the evidence on this point is in your minds, evenly balanced both for the [51] plaintiff and against the plaintiff, your verdict must be for the defendant, because the plaintiff has again failed in his proof."

XIV.

"The defendant charges in its answer that if the plaintiff sustained any injuries at the time and place alleged, that it had no information concerning the same and therefore denies that plaintiff sus-

tained any injuries at the time and place and in the manner alleged, and defendant alleges further that if plaintiff sustained any injuries as complained of, that the same were caused and occasioned by reason of the careless and negligent conduct of the plaintiff himself, and not otherwise, in that he heedlessly and recklessly undertook to board said train in an improper manner, while the same was in motion and that at the time said train was put in motion at Pacific City, neither the plaintiff nor any other passenger was on the platform of said station, attempting to board the said train, and that if plaintiff attempted to board said train he did so after the same was put in motion and after the doors and vestibule of said train had been closed, and that plaintiff failed to exercise his mental faculties in any way to observe, escape and avoid the risks and dangers of attempting to board a moving train and that he failed to take proper care to provide for his personal safety."

XV.

"You are instructed that the plaintiff in this case would not be a passenger within the meaning of the law unless you should find from the evidence that he was actually attempting to board said car exercising reasonable care and [52] prudence on his part before the conductor gave the signal for the car to start, or that said plaintiff had made known his intentions to board said train by signalling the motorman or conductor, or was in such a position as to indicate his intentions to board said train, under the circumstances, and that the conductors

either saw or in the exercise of due care should have realized his intentions so to do, before signaling for said train to start."

XVI.

"If you find from the evidence that both the plaintiff and the employees of the defendant company were negligent and that this accident resulted from the joint or concurring negligence of the parties, that is, the negligence of both plaintiff and defendant, concurrently contributing to the injury, then your verdict must be for the defendant. The law does not undertake to deal with relative degrees of negligence, and even though the defendant's employees were guilty of negligence, if you also find that the plaintiff's negligence contributed to the injury, then your verdict must be for the defendant, regardless of the ratio or proportion of negligence of the respective parties. Where the plaintiff himself so far contributes to the accident by his own negligence or want of ordinary care and caution, that but for such negligence or want of ordinary care and caution, the accident would not have occurred, plaintiff cannot recover and your verdict must be for the defendant."

XVII.

"You are instructed that misconduct or negligence in the discharge of duty is never presumed but must be proven. The presumption is that the person charged with a performance [53] of a duty has discharged that duty honestly and faithfully, so in this case, if you find that the train came to a full stop at Pacific City, the law presumes that the train

was not started forward by the employees of the defendant company, until the exercise of proper care and caution on their part to ascertain whether or not any one was attempting to board said train; this presumption would continue until overcome by proof to the contrary."

XVIII.

"The burden is upon the plaintiff to show by the fair preponderance of the evidence that the injuries he complains of have resulted from the accident, not merely that they may have so resulted. You are not justified in awarding him for purely speculative injuries, that is to say, for results which may or may not happen, and you will allow the plaintiff nothing for future pain and suffering, unless you are satisfied by a fair preponderance of the evidence that future pain and suffering are reasonably certain to result from the injuries."

XIX.

"If under the foregoing instructions you find for the plaintiff, you will assess his damages at such sum, not to exceed ten thousand dollars, as you may believe from the evidence will, as a present cash payment, reasonably and fairly compensate him for the injury he has sustained, and to determine its amount you may consider plaintiff's age, his previous condition of health, his earning capacity, his expectancy of life, the permanency of the injury, the pain and suffering he has endured, and that which it is shown with reasonable certainty, he will suffer in the future." [54]

XX.

"If you find for the plaintiff in this action, you will confine your verdict to such an amount as will compensate him for actual loss and damage in the case. You will not allow anything by way of punishment or exemplary damages. There should not be any idea of punishing the defendant in your minds, but simply that of compensating the plaintiff for his loss, if as I said before, you should find from the evidence in the case that he is entitled to recover anything."

XXI.

In taking up these questions after you retire to your jury-room, naturally and reasonably, the manner in which to approach the case is to first consider the question of whether there is a fair preponderance of evidence showing that *that* the plaintiff himself contributed to his injury by his own want of ordinary care. If you find on that issue that he was guilty of such contributory negligence and because his own negligence contributed to his injury, you would stop there at that point and return a verdict for the defendant, because, as I told you at least twice before, the plaintiff cannot recover if he was himself at fault in this respect; but if you fail to find that there is a fair preponderance of evidence showing that he himself was guilty of contributory negligence, as I have defined it to you, you would then pass to the next step and determine whether the defendant was negligent in the particular of which plaintiff complains, and whether that was shown by a fair preponderance of the evidence. If you failed

to find that there was a fair preponderance of the evidence showing such negligence, you would return a verdict for the defendant; but if you do find that there is a fair preponderance of the evidence showing such [55] negligence, and that there is a fair preponderance of the evidence showing that that negligence on its part was the cause of plaintiff's injury, then you would pass to the final step in the case and determine the amount that should be allowed plaintiff on account of his injury.

XXII.

The argument which plaintiff's counsel made regarding his earning capacity, taking three dollars a day as a basis of computation, is liable to be misleading in this respect: He states that his client was twenty-six years old, that he would live until three score years and ten, that it might be presumed that he would live that long. Well, it only takes a moment's reflection to determine that cash in hand, money paid now, would be much more valuable to him, than if he would get it on his seventieth birthday, because that would be a long time in the future, and one dollar at the end of forty years or more, there would be a considerable discount on it if you wanted to get its present worth, that is, if you take $10,000 now at seven per cent interest, that would earn $700 per year, which he figured out, I believe, would be the earning capacity of his client. Upon that principle he would have the $700 a year and still have the $10,000 left at the end of that period, so if you do come to that point in the case, take those things into consideration in finding the present value

of his services and the extent to which they have been impaired. **[56]**

XXIII.

You are the sole and exclusive judges of every question of fact in the case, and the weight of the evidence and the credibility of the witnesses. In weighing the evidence, and in passing upon and determining the amount of credit that should be accorded the different witnesses who have come before you and testified, you should take into account the manner in which they have given their testimony, their appearance upon the stand, whether they appeared to you to be candid and fair, and whether the opposite, whether they impressed you as trying to tell exactly what they knew, neither adding to it nor taking from it, or whether they appeared to you to be reluctant, evasive, holding back something until they were forced by repeated questions, or whether they may not have impressed you as being too willing, running along, volunteering information which nobody had asked for.

XXIV.

Also you will take into consideration the testimony of each witness by itself, whether it appears to be reasonable and probable in the light of all of the circumstances, whether it is corroborated by other testimony where you would expect it to be corroborated, if it were true, or whether it is contradicted by other evidence in the case; also you should take into account whether any witness has made any contradictory statements at other times that is, statements contradicting or at variance with those

that he makes now upon the witness-stand. You will take into account the situation in which each witness was placed as enabling that witness to tell you exactly what took place, if he wanted to, because one witness might be much better situated to tell you exactly what happened [57] than another who was just as honest. Also you will take into account the interest that any witness may have in the case, as shown either by the manner in which he gave his testimony or by his relation to the case. The plaintiff, having taken the stand in his own behalf, you will apply to his testimony the same rules you apply to the testimony of other witnesses, including his natural interest in the result of your verdict.

XXV.

You are not bound to find in accordance with the greater number of witnesses, but the number of witnesses is something you should take into account in arriving at the truth, because a number of witnesses are not so likely to be mistaken as one witness, that is, if the number all testify along the same lines.

XXVI.

If you find that any witness has wilfully testified falsely with regard to any material matter, you may disregard his testimony entirely, except in so far as it may be corroborated by other credible testimony.

The COURT.—Anything further, gentlemen?

Mr. WOODS.—Your Honor stated there that $10,000 at seven per cent would make $700, but there was nothing said whatever about pain and suffering.

The COURT.—I am simply trying to show them

that that argument was misleading, to take his earning capacity and give him now all of the money that he would ever earn, or anything like that. That was what I was trying to point out, that that would be misleading. Of course, I did not mean to prevent their taking into account future pain and suffering which he might endure. **[58]**

Mr. OAKLEY.—Defendant excepts to an instruction given by the Court relative to the degree of care that a common carrier owed, and then the Court proceeded as follows: "But the passenger and the plaintiff in this case is bound to exercise ordinary care," and then proceeded along the line of ordinary care in boarding the car. Defendant excepts to the instruction for the reason that the plaintiff in this case was not a passenger, but, according to evidence here on behalf of the defendant, was merely running to get the car, and if the car had been started and put in motion, or if the plaintiff was not an intending passenger, then the company owed no care whatever to the plaintiff. He was a trespasser.

The COURT.—Well, I can see where the jury might misunderstand the first part of the instruction. I will endeavor to straighten that out. The last part of your exception, I will not comment upon.

Gentlemen of the Jury: The Court did not mean in any way to intimate that the plaintiff was a passenger, but, whether he was a passenger or not, he was bound to exercise ordinary care for his own safety. That was what the first part of my instruction was meant to mean.

Mr. OAKLEY.—I wish to take exception to that instruction because it does not state the rule applicable to the facts of this case, and does not correctly state the law.

The COURT.—Exception allowed, although in a general exception [59] of that kind, I do not believe you would gain any advantage.

Mr. OAKLEY.—I do not believe I would, either, but I tried to make it more definite in the latter part of the other exception.

The defendant wishes to except for the reason that if the plaintiff was not a passenger, as we say he was not a passenger, and was running to board the car, he was a trespasser, and no exercise of ordinary care on his part would justify him in attempting to board the car.

The COURT.—Gentlemen of the jury, if the train was moving and the vestibule was closed, and there was no invitation on the part of the defendant company to encourage the plaintiff in any way to board the car, and he flew at the side of the car, the defendant company did not owe him any exercise of ordinary degree of care. All it did owe him was for itself and its servants to refrain from wilfully and purposely injuring the plaintiff.

Mr. OAKLEY.—Defendant also excepts to the refusal of the Court to give defendant's requested instruction No. 5, which is as follows:

"You are further instructed that if you believe from the evidence that at the time of this accident the plaintiff attempted to board said car while the same was in motion he cannot recover damages from

the defendant, because he assumed the risk of being injured while attempting to board said train. The defendant company cannot be held liable for mistakes in judgment made by persons in attempting to board moving cars."

Mr. OAKLEY.—Defendant also excepts to the refusal of the Court to give defendant's requested instruction No. 6, which is [60] as follows:

"You are instructed that if you believe from the evidence that the train car of the defendant was put in motion before plaintiff had attempted to board the same, this fact would not authorize or make it right for the plaintiff to commit an act of negligence in attempting to get upon said car to prevent being left behind."

The COURT.—Exceptions allowed.

The COURT.—Gentlemen of the jury, the Court submits two forms of verdict, one finding for the plaintiff, and one finding for the defendant. The one finding for the defendant, all it requires is that it be filled out by the signature of your foreman, but the one finding in favor of the plaintiff has a blank space in it, in which it would be necessary to insert the amount of damages you may award him, and also you should have that signed by your foreman, if you find for the plaintiff, and notify the bailiff when you have agreed and return with your verdict into court.

(Jury retires.) [61]

Verdict.

Thereafter the jury returned into open court with a verdict in favor of the plaintiff for damages

against the defendant in the sum of $3,500.

Thereafter and in due time defendant served and filed a Petition for a new trial, alleging as grounds therefor, among other grounds, the following:

Irregularity in the proceedings of the plaintiff and his attorney by which the defendant was prevented from having a fair trial, in that the attorney for the plaintiff intimidated one of defendant's witnesses by threatening to have him arrested for perjury if he should testify in the case, and in attempting to intimidate witnesses, and made statements before the jury that said defendant's witness had perjured himself at the former trial.

And thereafter and on the 23d day of July, 1917, said Petition for a new trial was duly presented to the Court, including the above ground, and said Petition was on said date denied and exceptions allowed this defendant.

Now, in the furtherance of justice and that right may be done, the defendant presents the foregoing as its Bill of Exceptions in this cause, and prays that the same may be settled, allowed, signed, and certified by the Judge, as provided by law, and filed as a Bill of Exceptions.

F. D. OAKLEY,
Attorney for Defendant.

Received copy of within Bill of Exceptions this 20th day of August, 1917.

RALPH WOODS,
C. L. W. [62]

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Aug. 20, 1917.

Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

Refiled in the U. S. District Court, Western Dist. of Washington, Southern Division. As Settled by the Court. Dec. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [63]

Order Settling Bill of Exceptions.

Now, on this 8th day of December, 1917, the above cause coming on for hearing on the application of the defendant to settle the bill of exceptions in said cause, defendant appearing by F. D. Oakley, its attorney, and the plaintiff appearing by Ralph Woods and Charles Westcott, attorneys, and it appearing to the Court that the defendant's proposed bill of exceptions was duly filed and served on the attorneys for the plaintiff, within the time provided by law, and the order of this Court, and that certain amendments have been suggested thereto and the Court having ordered certain amendments to be made and it appearing to the Court that there has been filed with the clerk of said court a bill of exceptions which contains the amendments as ordered by the Court, and that the same is in all other respects a duplicate of the proposed bill of exceptions, filed by the defendant herein in this cause, and it appearing that the time for settling said bill of exceptions has not expired; and it further appearing to the Court that the said bill of exceptions as amended contained all the material facts occurring in the trial of said cause, together with the exceptions thereto and all [64]

the material things and matters occurring upon the trial, except the exhibits introduced in evidence, which are hereby made a part of said bill of exceptions, and the clerk of this court is hereby ordered and instructed to attach the same thereto;

THEREFORE, upon motion of F. D. Oakley, attorney for the defendant, is is hereby

ORDERED, that said bill of exceptions as amended, filed on the 20th day of August, 1917, be and the same is hereby settled as a true bill of exceptions in said cause, and that the same is hereby certified accordingly by the undersigned Judge of this court who presided at the trial of said cause, as a true, full, and correct bill of exceptions, and the clerk of this court is hereby ordered to file the same as a record in said cause and transmit the same to the Honorable Circuit Court of Appeals for the Ninth Circuit.

Plaintiff excepts because bill of exceptions was not served and filed within the time allowed by law and the rules of the Court; and objects to the signing of any bill of exceptions, and exception is hereby allowed.

EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [65]

General Order Continuing All Court Matters Over Term.

At a regular session of the United States District Court for the Western District of Washington, Southern Division, held at Tacoma, on the 2d day of July, 1917, the Honorable Edward E. Cushman, United States District Judge, presiding, among other proceedings had were the following, truly taken and correctly copied from the journal of said court, to wit:

It is now ordered that Court stand adjourned *sine die,* and that all causes, motions, demurrers and other matters, now pending in this court at Tacoma, Washington, and not now disposed of are continued until the next regular term of said court, and that the petit jury now in attendance upon this court be kept in attendance thereon for the purpose of disposing of the jury cases now set for trial in the July term thereof. [66]

Assignments of Error.

Comes now the defendant, Puget Sound Electric Railway, a corporation, and files the following assignments of error, upon which it will rely upon its prosecution of its writ of error, in the above-entitled cause, in the United States Circuit Court of Appeals for the Ninth Circuit, for relief from the judgment rendered in said cause:

I.

The Court erred in overruling defendant's peti-

tion for a new trial on the grounds therein set forth.

II.

Misconduct of plaintiff's attorneys in that the attorney for the plaintiff intimidated one of the plaintiff's witnesses during the course of the trial by threatening to have him arrested for perjury if he should testify, and in attempting to intimidate witnesses.

III.

Misconduct of attorney for plaintiff in the statements before the jury, that said defendant's witness had perjured himself in the former trial of this action. [67]

IV.

The Court erred in giving the following instruction to the jury:

> "But the passenger and the plaintiff in this case by the same rule is not held to that high degree of care, but he is bound to exercise ordinary care for his own safety when he attempts to board a train, and if he fails to exercise ordinary care for his own safety and because of that failure on his part to exercise ordinary care he is injured, why then he cannot recover, *even the* the defendant company or its servants are negligent."

For the reason that the plaintiff was not a passenger, but according to the evidence of the defendant, was running to get the car after the car had been put in motion, that the plaintiff was not a passenger or an intending passenger, but was a trespasser, and no exercise of ordinary care on his part would justify

him in attempting to board the car, and the instruction does not correctly state the duty of the defendant company in the premises, and defendant was entitled to have a jury correctly instructed as to the law relative to its defense.

V.

The Court erred in refusing to give defendant's requested instruction number five as follows:

> "You are further instructed that if you believe from the evidence that at the time of this accident the plaintiff attempted to board said car while the same was in motion, he cannot recover damages from the defendant, because he assumed the risk of being injured by attempting to board said train. The defendant company cannot be held liable for mistakes in judgment made by persons in attempting to board moving cars." [68]

For the reason that said instruction correctly states the law applicable to the facts, and the Court refused and neglected to give an instruction embodying the same principle of law, and the jury were left without proper guidance, and defendant was thereby deprived of a fair trial.

VI.

The Court erred in refusing to give defendant's requested instruction number six as follows:

> "You are instructed that if you believe from the evidence that the train car of the defendant was put in motion before plaintiff had attempted to board the same, this fact would not authorize or make it right for the plaintiff to commit an

act of negligence in attempting to get upon said car to prevent being left behind."

For the reason that said instruction correctly states the law applicable to the facts, and the Court refused and neglected to give an instruction embodying the same principle of law, and the jury were left without proper guidance, and defendant was thereby deprived of a fair trial.

WHEREFORE, defendant, plaintiff in error, prays that the judgment of the Honorable District Court of the United States for the Western District of Washington, Southern Division, rendered in the above-entitled cause, be reversed and that such direction be given that full force and efficiency may inure to the defendant by reason of defendant's defense to said cause.

F. D. OAKLEY,
Attorney for Defendant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 16, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [69]

Petition for Writ of Error.

Comes now the defendant herein, Puget Sound Electric Railway, and says that on or about the 8th day of June, 1917, this Court entered judgment herein in favor of the plaintiff and against the defendant in the sum of $3,500, in which judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice of this de-

fendant, all of which will more in detail appear from the assignment of errors which is filed with this petition.

WHEREFORE, this defendant comes now by its attorney and prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of errors so complained of, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to the Circuit Court of Appeals.

And the defendant further petitions this Honorable Court for an order allowing it to prosecute a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, under and according to the laws of the United States in that behalf made and provided, and also that an order be [70] made fixing the amount of security which this defendant shall give and furnish upon said writ of error, and that the judgment heretofore rendered be superseded and stayed, pending the determination of said cause in the Honorable Circuit Court of Appeals.

F. D. OAKLEY,
Attorney for Defendant.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 16, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [71]

Order Allowing Writ of Error.

On this 16th day of October, 1917, came the defendant herein, Puget Sound Electric Railway, by its attorney, and filed herein and presented to the Court its petition, praying for the allowance of a writ of error, and praying also that a transcript of the record and proceedings and papers upon which judgment herein was rendered, duly authenticated, may be sent to the United States Circuit Court of Appeals for the Ninth Judicial Circuit, and that such other and further proceedings may be had as may be proper in the premises, and said defendant having duly filed an assignment of errors intended to be urged by it and the Court being advised in the premises,

IT IS HEREBY ORDERED, that a writ of error be and is hereby allowed, to have reviewed, in the Honorable United States Circuit Court of Appeals for the Ninth Circuit, the judgment entered herein, and it is further ordered that the amount of the bond on said writ of error is hereby fixed at the sum of $5,000.00, to be given by the defendant, and upon the giving of said bond, the judgment heretofore rendered will be superseded pending the hearing of said cause, in the [72] Honorable Circuit Court of Appeals.

IN WITNESS WHEREOF, the above order is granted and allowed, this 16th day of October, 1917.

EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 16, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [73]

Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS: That we, Puget Sound Electric Railway, a corporation, the defendant above named, as principal, and National Surety Company, a corporation, organized under the laws of the State of New York, and authorized to transact the business of surety in the State of Washington, as surety, are held and firmly bound unto the plaintiff in the above-entitled action, in the sum of Five Thousand Dollars ($5,000.00), for which sum, well and truly to be paid to said Alexander Matson, his executors, administrators, and assigns, we bind ourselves, our and each of our successors, and assigns, jointly and severally, firmly by these presents.

SEALED with our seals this 16th day of October, 1917.

THE CONDITION of this obligation is such that whereas, the above-named defendant, Puget Sound Electric Railway, a corporation, has sued out a writ of error to the United States Circuit Court of Appeals for the Ninth Circuit, to reverse the judgment in the above-entitled cause by the District Court of the United States for the Western District of Washington, Southern Division, and whereas, the said Puget Sound Electric Railway, desires to supersede

said judgment and stay the issuance of execution thereon pending the determination of said cause in the said United States [74] Circuit Court of Appeals for the Ninth Circuit:

NOW, THEREFORE, the condition of this obligation is such that if the above-named Puget Sound Electric Railway, a corporation, shall prosecute said writ of error to effect, and answer all costs and damages awarded against it, if it shall fail to make good its plea, then this obligation shall be void; otherwise the Court may enter summary judgment against said Puget Sound Electric Railway and said surety for the amount of such costs and damages awarded against said Puget Sound Electric Railway, and this obligation to remain in full force and effect.

PUGET SOUND ELECTRIC RAILWAY.
By F. D. OAKLEY,
Its Attorney.
JONES & HART CO.,
Agents.

NATIONAL SURETY COMPANY.
(Corporate Seal.) By E. M. HAYDEN,
Resident Vice-President.
By F. H. SWEETLAND,
Resident Assistant Secy.

Approved this 16th day of October, 1917.
EDWARD E. CUSHMAN,
Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 16, 1917.

Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [75]

Order Extending Time to and Including December 17, 1917, to File Record and Docket Cause in Appellate Court.

For good cause shown, it is by the Court here now CONSIDERED, ORDERED and ADJUDGED that the time within which to file in the United States Circuit Court of Appeals for the Ninth Circuit, the transcript, record or return on Writ of Error herein, be and the same is hereby extended to and including the 17th day of December, A. D. 1917.

Dated this 13th day of November, A. D. 1917.

EDWARD E. CUSHMAN,
District Judge.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 13, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [76]

Certificate of Clerk U. S. District Court to Original Exhibits.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing is a true and correct copy of the record and proceedings in the case of Alexander Matson, Plaintiff,

versus Puget Sound Electric Railway, a Corporation, Defendant, No. 1980, in said District Court, as required by praecipe of F. D. Oakley, attorney for plaintiff in error, filed and shown herein, as the originals thereof appear on file and of record in my office in said district at Tacoma; and that the same constitutes my return on the annexed Writ of Error herein.

I further certify and return that I hereto attach and herewith transmit the original writ of error, the original Citation and the original order extending time to file the record in the United States Circuit Court of Appeals; and that I am transmitting herewith, attached to the bill of exceptions herein, the original exhibits filed in said case, as commanded by the order settling said bill of exceptions, said exhibits being as follows:

Defendant's Exhibit "A," Photograph.
Defendant's Exhibit "B," Photograph.
Defendant's Exhibit "D," Photograph.
Defendant's Exhibit "E," Map of Location of Track in Pacific City.
Defendant's Exhibit "F," Photograph.
Defendant's Exhibit "G," Photograph.
Defendant's Exhibit "H," Original Complaint in case No. 1779.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the plaintiff in error herein, for making record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828 R. S. U. S.) for making transcript of record and return, 173 folios at 15¢ each.....$25.95
Certificate of Clerk to Transcript, 3 folios at 15¢ each and seal..... .65

ATTEST my hand and the seal of said District Court at Tacoma in said District, this 12th day of December, A. D. 1917.

[Seal] FRANK L. CROSBY,
Clerk.
By F. M. Harshberger,
Deputy Clerk. [77]

In the United States District Court, Western District of Washington, Southern Division.

#1980.

ALEXANDER MATSON,
Plaintiff,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Corporation,
Defendant.

Additional Praecipe for Transcript of Record.

To the Clerk of said Court:

Please include in the transcript to be sent to the United States Circuit Court of Appeals the following pleadings and papers:

1. Complaint (original).
2. Answer thereto.

3. Petition for removal of cause from the Superior Court of the State of Washington to the U. S. District Court.

4. Bond for Removal.

RALPH WOODS,
CHAS. L. WESTCOTT,
Attorneys for the Plaintiff and Defendant in Error.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Dec. 8, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [78]

In the Superior Court of the State of Washington for the County of Pierce.

No. 38,610.

1980.

ALEXANDER MATSON,

Plaintiff,

vs.

PUGET SOUND ELECTRIC RAILWAY COMPANY, a Corporation, and JOHN DOE,

Defendants.

Complaint in Matson v. Puget Sound Electric Ry. Co. in Superior Court.

Now comes the plaintiff in the above-entitled cause and complaining of the defendant herein says:

I.

Plaintiff is a resident of Tacoma, Pierce County, Washington, of lawful age, and prior to the matters hereinafter referred to was a strong and able-bodied

man, earning and capable of earning three ($3.00) dollars per day.

II.

Defendant is a corporation, having a principal place of business in said City of Tacoma, and is a common carrier of passengers, and as such common carrier maintains and operates an electric railway running from Tacoma in Pierce County to Seattle in King County, and having as a station on said line, at which it receives and delivers passengers, a place known as Pacific City.

III.

The defendant John Doe, whose true name is to plaintiff unknown, is a resident of the County of Pierce, and State of Washington, and at the time of the injury to the plaintiff hereinafter set forth, was the conductor in charge [79] and control of the train of defendant Puget Sound Electric Company as hereinafter set forth.

IV.

In the late evening of Saturday, March 20, 1915, the plaintiff went to the station of defendant company at Pacific City for the purpose of taking a passenger train of defendant company for transportation from said Pacific City to Tacoma, said train being due and expected to arrive at Pacific City at about eleven o'clock P. M. Plaintiff remained in said station until the said train approached said station, when plaintiff went to the platform for the purpose of boarding said train. When the said train arrived at the station it stopped and discharged one passenger, and plaintiff thereupon, while said

train was at a standstill, attempted to board the said train by taking hold of the handholds on the front platform of the rear car, but before plaintiff could step upon said train, said train was started by a jerk which threw plaintiff under the wheels of said rear car and his left foot was run over and cut off at a point near the ankle.

V.

The injury to the plaintiff as aforesaid was caused by the negligence of the defendants in allowing its said train at said station to stop at said station for so short a period of time that after the discharge of incoming passengers the plaintiff, as an outgoing passenger, did not have time to board said train in safety; and further to the negligence of defendants in starting said train while plaintiff was in the act of boarding said train; and further to the negligence of the defendants in failing to safeguard and protect the plaintiff in boarding said train; and further to the negligence of defendants in permitting said train to stop at said station for [80] so short an interval that plaintiff was unable to board said train in safety, and in the further negligence of the defendants in starting said train while plaintiff was in the act of boarding said train.

VI.

Plaintiff says that by reason of his injury aforesaid he was subjected to great pain and suffering, and after delay was removed to a hospital in Tacoma, where he was placed under an anesthetic and his foot was amputated; that plaintiff continued to suffer

great pain and anguish for a long time after said amputation, and was confined in said hospital for several weeks, and by reason of said injury plaintiff is permanently maimed and will for the rest of his life be a cripple and his earning capacity will be permanently impaired, to the damage of the plaintiff in the sum of three thousand ($3,000.00) dollars.

WHEREFORE, plaintiff prays that he do have and recover of the defendants damages in the sum of three thousand ($3,000.00) dollars, together with his costs and disbursements in this action to be taxed.

RALPH WOODS,

Attorney for Plaintiff, Suite 717–18–19, Tacoma Bldg., Tacoma, Wash.

State of Washington,
County of Pierce,—ss.

Alexander Matson, being first duly sworn, on oath deposes and says: That he is the plaintiff in the above-entitled action; that he has read the within and foregoing complaint, knows the contents thereof and believes the same to be true.

ALEXANDER MATSON. [81]

Subscribed and sworn to before me this 18th day of June, 1915.

RALPH WOODS,

Notary Public in and for the State of Washington, Residing at Tacoma.

Filed in Superior Court, Sep. 15, 1915. E. F. McKenzie, Clerk. By Piper, Deputy.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 25, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [82]

In the Superior Court of the State of Washington in and for the County of Pierce.

No. 38,610.

ALEXANDER MATSON,

Plaintiff,

vs.

PUGET SOUND ELECTRIC RAILWAY, a Corporation, and JOHN DOE,

Defendants.

Answer in Matson v. Puget Sound Electric Ry. in Superior Court.

The defendant for answer to the complaint of the plaintiff filed herein, alleges as follows:

I.

For answer to paragraph one of said complaint, this defendant alleges that it has no information sufficient to form a belief as to the facts therein alleged and therefore denies the same.

II.

For answer to paragraph two of said complaint, this defendant admits the same and each and every allegation therein contained.

III.

For answer to paragraphs four, five, and six of said complaint this defendant denies the same and each

and every allegation therein contained, and particularly denies that plaintiff was damaged in the sum of $3,000.00, or in any other sum whatever, as therein alleged.

Further answering and as a further, separate and first affirmative defense, this defendant alleges:

I.

That if the plaintiff received any injuries at the time and place and in the manner as alleged in his complaint, [83] which this defendant denies, then the said accident which resulted in said injuries was occasioned by reason of the careless and negligent conduct of the plaintiff himself, and not otherwise, in that when said car was started from said Pacific City, after having permitted a passenger to alight therefrom, neither the plaintiff nor anybody else was on the platform to become a passenger on said car, and that if plaintiff attempted to board said car he did so after said car had been started and set in motion and without the knowledge of the defendant or its employees, and if plaintiff undertook to board the said car he heedlessly and recklessly undertook to board the same in an improper manner while the same was in motion, and failed to exercise his mental faculties in any way to observe, escape, and avoid the risks and dangers of his position, which were open and apparent to him and could have been easily avoided and that he failed to take proper care to provide for his personal safety.

J. A. SHACKLEFORD,
F. D. OAKLEY,
Attorneys for Defendant.

State of Washington,
County of Pierce,—ss.

F. D. Oakley, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the defendant company in the foregoing answer named; that he makes this verification for and on its behalf being authorized so to do; that he has read said answer, knows the contents thereof, and that the same is true.

F. D. OAKLEY. [84]

Subscribed and sworn to before me this 29th day of September, 1915.

GARDA FOGG,
Notary Public in and for the State of Washington,
Residing at Tacoma, in said State.

We hereby acknowledge due and legal service upon us of the within Answer at Tacoma, Washington, this 29th day of Sept., 1915.

FRANK H. KELLEY,
RALPH WOODS,
Attorneys for Plf.

Filed in Superior Court. Oct. 4, 1915. E. F. McKenzie, Clerk. By G. F. M., Deputy.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 25, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [85]

In the Superior Court of the State of Washington in and for the County of Pierce.

No. 38,610.

ALEXANDER MATSON,

Plaintiff,

vs.

PUGET SOUND ELECTRIC RAILWAY COMPANY, a Corporation,

Defendant.

Petition for Removal of Cause to United States District Court.

To the Honorable Judges of the Above-entitled Court:

Your petitioner, Puget Sound Electric Railway Company, a corporation, respectfully represents to this Honorable Court:

I.

That your petitioner is the defendant named in the above-entitled action; that it is a corporation organized and existing under and by virtue of the laws of the State of New Jersey.

II.

That the above-entitled action is a suit of a civil nature at common law, and is brought by the plaintiff to recover damages for personal injuries alleged to have been sustained by plaintiff on March 20th, 1915, through the negligence of the defendant in the operation of one of the interurban trains run and operated by said defendant near the city of Tacoma. That at the time said action was started plaintiff claimed

damages in the sum of Three Thousand ($3,000.00). That on the 21st day of January, 1916, the plaintiff filed an amended complaint herein, based upon the same cause of action as hereinabove alleged, but demanding damages in the sum of Ten Thousand Dollars ($10,000.00), and that the matter now in controversy in said suit exceeds, exclusive of interest and costs, the sum of Three Thousand Dollars ($3,000.00). [86]

III.

That said suit is entirely between citizens of different States, to wit, between the plaintiff, who your petitioner avers, was, at the time of the commencement of this action, ever since has been, and now is a resident and inhabitant of the State of Washington, and not of any other State, and the defendant, which was at all of said times, and still is, a citizen and resident and inhabitant of the State of New Jersey, and not of the State of Washington.

IV.

That your petitioner desires to remove this cause from the Superior Court of the State of Washington, in and for the County of Pierce, to the District Court of the United States for the Western District of Washington, Southern Division, and offers and files herewith a bond with good and sufficient surety for their entering in said District Court within thirty days from the date of the filing of this petition a certified copy of the record in said suit, and for paying all costs that may be awarded by said District Court, if said District Court shall hold that said suit was wrongfully or improperly removed thereto.

That the amended complaint herein was served upon defendant on the 21st day of January, 1916, at which time the above action first became removable, and not before, and that the time within which this defendant is required by the laws of the State of Washington to answer or plead to the said complaint of the plaintiff has not yet expired.

WHEREFORE your petitioner prays that said surety and bond be accepted, and that this cause may be removed to the District Court of the United States for the Western District of Washington, Southern Division, pursuant to the statutes of the United States in such case made and provided, and that no [87] further proceedings be had herein in this court, except to make an order of removal herein.

PUGET SOUND ELECTRIC RAILWAY,
By J. H. SHACKLEFORD,
F. D. OAKLEY,
Its Attorneys.

State of Washington,
County of Pierce,—ss.

F. D. Oakley, being first duly sworn, on oath deposes and says: That he is one of the attorneys for the defendant in the foregoing petition named; that the same is a foreign corporation and he makes this verification for and on its behalf, being authorized so to do; that he has read said petition, knows the contents thereof, and that the same is true.

F. D. OAKLEY.

Subscribed and sworn to before me this 24th day of January, 1916.

R. W. JONES,
Notary Public in and for the State of Washington,
Residing at Tacoma, in said State.

I hereby acknowledge due and legal service upon —— of the within —— at Tacoma, Washington, this 24th day of Jan., 1916.

RALPH WOODS,
Attorney for Plff.

Filed in Superior Court, Jan. 24, 1916. E. F. McKenzie, Clerk. By Libby, Deputy.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 25, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [88]

In the Superior Court of the State of Washington in and for the County of Pierce.

No. 38,610.

ALEXANDER MATSON,

Plaintiff,

vs.

PUGET SOUND ELECTRIC RAILWAY COMPANY, a Corporation,

Defendant.

Bond for Removal.

KNOW ALL MEN BY THESE PRESENTS: That we, the Puget Sound Electric Railway Company, a corporation, organized and existing under

and by virtue of the laws of the State of New Jersey, as principal, and Casualty Company of America, a corporation, organized and existing under the laws of the State of New York, as surety, are held and firmly bound unto Alexander Matson, the plaintiff, in the above-entitled action, in the penal sum of Five Hundred Dollars ($500.00), lawful money of the United States, for the payment of which sum well and truly to be made, we bind ourselves, our representatives, successors, and assigns, jointly and severally, firmly by these presents.

Sealed with our seals and dated this 24th day of January, 1916.

UPON THE CONDITION, NEVERTHELESS, THAT, whereas the said Puget Sound Electric Railway has petitioned the Superior Court of the State of Washington, in and for the County of Pierce, for the removal of the above-entitled cause therein pending, wherein said Alexander Matson is plaintiff and the Puget Sound Electric Railway is defendant, to the District Court of the United States for the Western District of Washington, Southern Division. [89]

NOW, THEREFORE, if the said Puget Sound Electric Railway shall enter into the District Court of the United States for the Western District of Washington, Southern Division, within thirty days from the date of filing of said petition a certified copy of the record in said suit, and shall well and truly pay all costs that may be awarded by said District Court, if said District Court shall hold that said suit was wrongfully or improperly removed thereto,

then this obligation shall be void; otherwise to be and remain in full force, virtue and effect.

PUGET SOUND ELECTRIC RAILWAY.
By J. A. SHACKLEFORD,
F. D. OAKLEY,
Its Attorneys.

CASUALTY COMPANY OF AMERICA.
[Corporate Seal] By F. H. SWEETLAND,
Its Attorney in Fact.

I hereby acknowledge due and legal service upon —— of the within ——, at Tacoma, Washington, this 24th day of Jan., 1916.

RALPH WOODS,
Attorney for Plff.

Filed in Superior Court. Jan. 24, 1916. E. F. McKenzie, Clerk. By Libby, Deputy.

Ent. Book of Bonds, No. M, page 263.

Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Feb. 25, 1916. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy. [90]

Certificate of Clerk U. S. District Court to Transcript of Record.

United States of America,
Western District of Washington,—ss.

I, Frank L. Crosby, Clerk of the United States District Court for the Western District of Washington, do hereby certify and return that the foregoing pages numbered from 78 to 90, inclusive, contain a true and correct copy of the record and proceedings

in the case of Alexander Matson, Plaintiff, versus Puget Sound Electric Railway, a Corporation, Defendant, No. 1980, in said District Court, as required by praecipe of Ralph Woods and Chas. L. Westcott, attorneys for defendant in error, filed and shown herein, as the originals thereof appear on file and of record in my office in said district at Tacoma.

I further certify that the following is a full, true and correct statement of all expenses, costs, fees and charges incurred and paid in my office by and on behalf of the defendant in error herein, for making record, certificate and return to the United States Circuit Court of Appeals for the Ninth Circuit in the above-entitled cause, to wit:

Clerk's fees (Sec. 828 R. S. U. S.) for making transcript of record and return, 28 folios at 15¢ each.....$4.20

Certificate of Clerk to transcript, 3 folios at 15¢ each and seal..... .65

ATTEST my hand and the seal of said District Court at Tacoma, in said District, this 12th day of December, A. D. 1917.

[Seal] FRANK L. CROSBY,
Clerk.
By F. M. Harshberger,
Deputy Clerk. [91]

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

PUGET SOUND ELECTRIC RAILWAY, a Corporation,

Plaintiff in Error,

vs.

ALEXANDER MATSON,

Defendant in Error.

Writ of Error.

United States of America.

The President of the United States of America, to the Honorable, the Judges of the District Court of the United States for the Western District of Washington, Southern Division, GREETING:

Because, in the record and proceedings, as also in the said District Court before you, or some of you, between Alexander Matson, defendant in error, and Puget Sound Electric Railway, a corporation, plaintiff in error, a manifest error hath happened, to the great damage of the said Puget Sound Electric Railway, plaintiff in error, as by its complaint herein appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, that under your seal distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States

Circuit Court of Appeals for the Ninth Circuit, together with this writ, so that you have the same at the city of San Francisco, in the State of California, in said circuit, on thirty days from the date of this writ, in the said Circuit Court of Appeals, that the record and proceedings aforesaid being inspected, the said Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, this 17th day of October, A. D. 1917.

[Seal] FRANK L. CROSBY,
Clerk of the United States District Court for the Western District of Washington, Southern Division.

By F. M. Harshberger,
Deputy.

Service of the above and foregoing writ of error by the receipt of a copy thereof is hereby acknowledged this 17 day of Oct. 1917.

RALPH WOODS,
CHAS. L. WESTCOTT,
Attorneys for Defendant in Error.

[Endorsed]: No. 1930. In the United States Circuit Court of Appeals for the Ninth Circuit. Puget Sound Electric Railway, a Corporation, Plaintiff in Error, vs. Alexander Matson, Defendant in Error. Writ of Error. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division.

Oct. 17, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

PUGET SOUND ELECTRIC RAILWAY, a Corporation,

Plaintiff in Error,

vs.

ALEXANDER MATSON,

Defendant in Error.

Citation on Writ of Error.

United States of America.

The President of the United States of America, to Alexander Matson, Defendant in Error, GREETING:

You are cited and admonished to be and appear in the United States Circuit Court of Appeals for the Ninth Circuit, at the courtroom of said Court, in the city of San Francisco, and State of California, within thirty days from the date of this Citation, to wit, within thirty days from October 17th, 1917, pursuant to a Writ of Error filed in the clerk's office of the District Court of the United States, Western District of Washington, Southern Division, wherein Puget Sound Electric, plaintiff in error, and Alexander Matson, is defendant in error, to show cause, if any there be, why the judgment in the said Writ of Error mentioned should not be corrected and speedy

justice done to the parties in that behalf.

WITNESS the Honorable EDWARD DOUGLASS WHITE, Chief Justice of the United States, and the seal of this Court this 17th of October, 1917.

[Seal] EDWARD E. CUSHMAN,
Judge of the United States District Court for the Western District of Washington, Southern Division.

Service of the above and foregoing Citation, the receipt of a copy thereof is hereby acknowledged this 17th day of October, 1917.

RALPH WOODS,
CHAS. L. WESTCOTT,
Attorneys for Defendant in Error.

[Endorsed]: No. 1930. In the United States Circuit Court of Appeals for the Ninth Circuit. Puget Sound Electric Railway, a Corporation, Plaintiff in Error, vs. Alexander Matson, Defendant in Error. Citation. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Oct. 17, 1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

In the United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

PUGET SOUND ELECTRIC RAILWAY, a Corporation,

Plaintiff in Error,

vs.

ALEXANDER MATSON,

Defendant in Error.

Order Extending Time to and Including December 17, 1917, to File Record and Docket Cause in Appellate Court.

For good cause shown, it is by the Court here now CONSIDERED, ORDERED and ADJUDGED that the time within which to file in the United States Circuit Court of Appeals for the Ninth Circuit, the transcript, record or return on writ of error herein be, and the same is hereby extended to and including the 17th day of December, A. D. 1917.

Dated this 13th day of November, A. D. 1917.

EDWARD E. CUSHMAN,
District Judge.

[Endorsed]: No. ——. In the Circuit Court of Appeals of the United States, for the Ninth Circuit. Puget Sound Electric Railway, Plaintiff in Error, vs. Alexander Matson, Defendant in Error. Order Extending Time to File Transcript, Record or Return. Filed in the U. S. District Court, Western Dist. of Washington, Southern Division. Nov. 13,

1917. Frank L. Crosby, Clerk. By F. M. Harshberger, Deputy.

[Endorsed]: No. 3092. United States Circuit Court of Appeals for the Ninth Circuit. Puget Sound Electric Railway, a Corporation, Plaintiff in Error, vs. Alexander Matson, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the Western District of Washington, Southern Division.

Filed December 14, 1917.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

United States Circuit Court of Appeals for the Ninth Circuit.

No. ——.

PUGET SOUND ELECTRIC RAILWAY, a Corporation,

Plaintiff in Error,

vs.

ALEXANDER MATSON,

Defendant in Error.

Stipulation Omitting Original Exhibits from Printed Transcript of Record.

It is hereby stipulated by and between the parties hereto that the original exhibits sent to the appellate court for the inspection of that court need not be printed or copied into the printed record.

F. D. OAKLEY,
Attorney for Plaintiff in Error.
RALPH WOODS,
Attorney for Defendant in Error.

[Endorsed]: No. 3092. In the United States Circuit Court of Appeals, Ninth Circuit, Western District of Washington. Puget Sound Electric Railway, a Corporation, Plf. in Error, vs. Alexander Matson, Def. in Error. Stipulation Omitting Original Exhibits from Printed Transcript of Record. Jan. 21, 1918. F. D. Monckton, Clerk.